THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.5352 of 2006

Dated:26.12.2006

Between
Gulla Tarakeswara Rao

.....Petitioner

and

1.The Joint Collector,
and Additional District
Magistrate, Vizianagaram
Vizianagaram District.
and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.5352 of 2006

ORDER:

This writ petition is filed seeking a Mandamus to declare the proceedings dated 4.3.2006 passed by the 1st respondent, as arbitrary and illegal.

It appears that a notification dated 12.8.2005, for fair shop dealer of shop No.2 of Arasada Village, Balijapeta Mandal, Vizianagaram District was notified for being filled up with BC candidate. It seems that the petitioner, who is not only belongs to BC but also a physically handicapped person, applied along with others. The 2nd respondent-Revenue Divisional Officer *vide* proceedings dated 26.10.2005 appointed the petitioner as a fair price shop dealer for shop No.2 of Arasada Village, Balijapeta Mandal, Vizianagaram District. Aggrieved by the same, the 4th and 5th respondents

filed an appeal before the 1st respondent complaining that they are more suitable persons and they ought to have been appointed. However, while considering the appeal filed by the 4th and 5th respondents, the 1st respondent set aside the appointment of the petitioner on a different ground holding that the total number of vacancies to be filled up with BC candidates being 137, already 250 persons belonging to BC community are running the fair price shops. Therefore, there is no roaster point available against BC candidates and thus, set aside the appointment of the petitioner and that the 2nd respondent-Revenue Divisional Officer was directed to re-notify the vacancy. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner contended that the petitioner is not only a BC candidate but also a physically handicapped person. Therefore, his case was considered. Since there are 7 vacancies available against the physically handicapped quota in the entire division of Parvathipuram, filling up of one vacancy with the

petitioner does not create any problem in identifying the BC vacancies.

Learned Government Pleader appearing for the respondents contended that BC candidates are outnumbered their quota against 173 vacancies reserved for BCs, in Parvathipuram Division already 230 persons belonging to BC are having authorizations to run fair price shops and therefore, the question of filling up of this vacancy by a BC candidate does not arise. Under those circumstances, the 1st respondent-Joint Collector has rightly considered the appeal filed by the 4th and 5th respondents and allowed and directed re-notification of the vancancy. The order passed by the Joint Collector does not call for any interference by this Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

A perusal of the record goes to show that the

petitioner is a physically handicapped person and also belonging to a BC category and the vacancy was notified for BC candidates and the petitioner was selected and appointed. The respondents 4 and 5 are not qualified, their cases were rejected. Thus, they have filed an appeal before the 1st respondent-Joint Collector. The 1st respondent while taking the statistics into consideration felt that the vacancy ought not to have been reserved for BC candidate, as such, set aside the appointment of the petitioner and directed the 2nd respondent-Revenue Divisional Officer to re-notify the vacancy.

Learned counsel for the petitioner states that in the entire Parvathipuram Division, if compared with the other areas, BC population is 80%. But it is for the authorities to decide as to whether OC are available in each and every village and whether the same can be reserved only for OC candidates when the roaster points have already been filled up as per the policy. This is a peculiar case where against 173 reserved vacancies, 250 persons belonging to BC category were appointed. But, that does not

mean that all those persons who were appointed against 250 vacancies have been appointed only against BC vacancies. In a situation like this, probably it may have to be deemed that they are appointed against OC vacancies, but since 173 vacancies are already filled up with BC candidates nothing can be done in this case for getting it reserved for BC candidate, as notified by the authorities. Therefore, Joint Collector cannot be said to be wrong in pointing out that all the 173 vacancies belonging to BC are filled up.

However, since the petitioner is a physically handicapped person, the Revenue Divisional Officer shall reconsider the matter in appointing the petitioner against the physically handicapped quota if he is otherwise eligible as per law. Till such time, the authorization of the petitioner shall not be disturbed. No costs.

Writ petition is disposed of accordingly. No costs.

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26-12-2006

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